

**IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF OKLAHOMA**

RYAN TYLER MERRILL,)	
)	
Plaintiffs,)	
)	
v.)	No. 22-CV-007-RAW
)	
JONATHAN SEAGRAVES,)	
GREG FELL,)	
CITY OF BROKEN ARROW, and)	
BRANDON BERRYHILL,)	
)	
Defendants.)	

ORDER

Before the court is Defendant Greg Fell’s Objection to Magistrate Jackson’s Report and Recommendation [48] and request that Defendant Fell’s Motion to Dismiss [Docket No. 29] be granted.

This case was filed on January 4, 2022 by Plaintiff Ryan Merrill presenting multiple causes of action against Defendants Jonathan Seagraves and Greg Fell, Officers with the Broken Arrow Police Department, and Broken Arrow Police Chief Brandon Berryhill and the City of Broken Arrow, alleging excessive force claims under the Fourth and Fourteenth Amendments, pursuant to 42 U.S.C. § 1983 along with claims of failure to train and failure to supervise. Officer Greg Fell filed a Motion to Dismiss [29] asserting that he had no reasonable opportunity to prevent the alleged excessive force and that he is entitled to qualified immunity as the alleged acts and omissions were not prohibited by clearly established law.

On October 14, 2022 the court referred this matter to Magistrate Judge Jackson for all further proceedings pursuant to 28 U.S.C. § 636. On November 28, 2022, Magistrate Judge Jackson entered a Report and Recommendation with regard to Defendant Fell's Motion to Dismiss [Docket No. 47]. The magistrate judge found that Defendant Fell is not entitled to qualified immunity at this point in the proceedings and that Plaintiff has alleged a claim for failure to intervene sufficient to survive the dismissal stage.

Defendant Fell filed his Objection to Magistrate Jackson's Report and Recommendation [48] asserting that the magistrate's report errs by concluding that Plaintiff pled sufficient facts to reasonably infer Defendant Fell had sufficient notice of Defendant Seagraves' intended alleged unlawful second use of his Taser and that Defendant Fell had 15 seconds to intervene to prevent co-Defendant Seagraves' from deploying his Taser a second time. Fell further asserts that the report is too broad, a mere statement of general duty imposed and insufficient to constitute clearly established law for a qualified immunity analysis.

The court has reviewed the record and finds that while the Defendant's objections are detailed and well-argued, the court is persuaded by the Magistrate Judge's thorough Report and Recommendation. Accordingly, it is the order of this court that the Magistrate's Report and Recommendation [47] is hereby affirmed and adopted. Defendant Fell's Objection [48] is **OVERRULED** and his Motion to Dismiss [29] is **DENIED**.

IT IS SO ORDERED this 13th day of February, 2023.

A handwritten signature in black ink, reading "Ronald A. White". The signature is written in a cursive, flowing style.

HONORABLE RONALD A. WHITE
UNITED STATES DISTRICT JUDGE
EASTERN DISTRICT OF OKLAHOMA